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RIGHTS OF PERSONS BELONGING TO NATIONAL, ETHNIC, RELIGIOUS AND LINGUISTIC MINORITIES

Analytical compilation of the comments received in pursuance of paragraph 3 of Commission on Human Rights resolution 1990/45 on the rights of persons belonging to national, ethnic, religious and linguistic minorities

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Introduction

1. At the forty-sixth session of the Commission on Human Rights, an open-ended Working Group which the Commission has set up annually since 1978 adopted, in first reading, a draft declaration on the rights of persons belonging to national, ethnic, religious and linguistic minorities (E/CN.4/1990/41, annex).

2. At the same session the Commission on Human Rights, by resolution 1990/45 (paragraph 3) requested the Secretary-General to invite comments, for consideration by the Working Group, from Governments, specialized agencies, intergovernmental and non-governmental organizations, on the text of the articles of the draft declaration approved by the Working Group.

3. By the same resolution (paragraph 4) the Commission invited the Secretary-General to prepare for submission to the Working Group an analytical compilation of the comments received in pursuance of paragraph 3 of the resolution.

4. By a note verbale of 5 November 1990 the Secretary-General invited comments in pursuance of paragraph 3 of the above-mentioned resolution.

5. As of 22 January 1991 the Governments of the following States had submitted their comments: the Czech and Slovak Federal Republic; Germany; Finland; Hungary; Norway; Panama; the United States of America.

6. As of the same date comments had also been received from the following intergovernmental organizations: the Council of Europe; the Organization of American States, and non-governmental organizations: Baha'i International Community; B'nai B'rith International, World Jewish Congress; International Federation of Human Rights; International Federation Terre des Hommes; Four Directions Council; International Institute of Humanitarian Law; International League for the Rights and the Liberation of Peoples; Minority Rights Group.

GENERAL COMMENTS

Czech and Slovak Federal Republic

[2 January 1991]
[English]

7. Procedure of the CSFR Government with regard to securing the rights of minorities is based on a demand for the protection of minority members from any form of discrimination and supports a full guarantee of the generally recognized human rights and fundamental freedoms for these persons. The principle of equality of all inhabitants of the Republic creates a basis for full exercise of the rights of minorities and their members within the State.

8. However, being part of a minority does not entail privileges for its members in relation to the rest of the population within the State. The Czech and Slovak Federal Republic is of the opinion that this reality should be more clearly formulated in the draft declaration.

9. As far as the question of rights for national minorities is concerned, the CSFR Government bases itself on the multilateral European standard expressed in the Concluding Documents of the Vienna CSCE Follow-up Meeting and, particularly, on the Copenhagen Conference on the Human Dimension (Part IV), which considers a compromise acceptable to all countries in the given region to be an optimum solution. Therefore it recommends that the above-mentioned documents be taken into account when preparing the text of the declaration.

Germany

[7 January 1991]
[English]

10. In formulating the individual articles the declaration should consistently refer to the "rights of persons belonging to minorities". This corresponds to the wording of article 27 of the International Covenant on Civil and Political Rights, to which the mandate of the Working Group set up to draft the declaration expressly makes reference. This approach based on personal rights also appears necessary for the sake of effective exercise of the rights because in many cases it may not be clear who should be authorized to assert the rights of a minority as a whole.

11. So far the Working Group has left open the definition of a minority. In the view of the Government of Germany, the efforts to arrive at such a definition should be based on the definition proposed by Mr. J. Deschênes in his study presented to the Commission on Human Rights in 1985 (cf. E/CN.4/Sub.2/1985/31):

> "A group of citizens of State, constituting a numerical minority and in a non-dominant position in that State, endowed with ethnic, religious or linguistic characteristics which differ from those of the majority of the population, having a sense of solidarity with one another, motivated, if only implicitly, by a collective will to survive and whose aim is to achieve equality with the majority in fact and in law."

12. In the opinion of the Government of Germany, an essential feature of a minority is that the persons belonging to it should be nationals of the territorial State. Otherwise it may prove difficult to distinguish between the rights of persons belonging to minorities and the rights of foreigners and migrant workers; this might be detrimental to effective protection of the respective rights.

13. The existing draft should be expanded to include such rights of persons belonging to minorities as are particularly important for the preservation and advancement of their identity. These include above all the right to maintain educational, cultural and religious institutions, freedom of association, freedom of information and freedom of movement within a country as well as the right to leave any country and to return to one's own country.

Finland

[20 December 1990]
[English]

14. The Ministry of Justice notes with satisfaction that the efforts of the Working Group of the Commission on Human Rights to a declaration on the rights of minorities have proceeded to a first reading. The draft declaration seems to be drawn up with sufficient care to enable it to form the basis of an acceptable final declaration. The Ministry hopes that the work is continued as soon as possible, since it promises the prospect of possibly the first human rights instrument drawn up expressly for the purpose of protecting minorities which may be referred to when addressing the many difficult minority problems which are awaiting their solution in different parts of the world.

15. As to the contents of the draft declaration, the Ministry of Justice has no particular objections. It corresponds to the points of views on which the minority policy observed also in Finland is built. Most of the principles expressed in the draft declaration are contained in Finnish legislation.

16. There are also, however, other simultaneously ongoing projects for the preparation of minority rights instruments. The Council of Europe is preparing the European Charter for Regional or Minority Languages which is to be completed in 1992. The European Commission for Democracy through Law is preparing a Convention for the protection of minorities which apparently will be discussed in the agencies of the Council of Europe in the course of 1991. The Parliamentary Assembly of the Council of Europe has prepared a recommendation on the rights of minorities (Recommendation No. 1134 (1990)). Minority rights questions have been a central issue also in the CSCE-process, and at the Conference on the Human Dimension of the CSCE in Copenhagen significant decisions on minority rights policy were made.

17. Within the United Nations as well, minority rights questions have played a prominent part i.a. in the preparation of the Declaration on the Rights of Indigenous Peoples in the working group of the Sub-Commission on Prevention of Discrimination and Protection of Minorities. In 1989 the ILO adopted a convention on the same questions; i.e. the Convention concerning Indigenous and Tribal Peoples in Independent Countries. The United Nations Convention on the Protection of the Rights of All Migrant Workers and their Families can also be mentioned.

18. Minority rights questions have thus been very much in the foreground in many fora and the results of the work are in constant interaction. It is indeed appropriate that new principles which have been established by one body often form a part of the work of another body dealing with corresponding questions.

19. The Ministry of Justice hopes that the draft declaration will be further developed in the light of the work carried out in the preparation of the other above-mentioned minority rights instruments. Since it is a declaration, it may be appropriate to proceed from the presently accepted minimum level to goals which are more ambitious than those possible when preparing conventions with a directly binding effect on States. At the same time, the Ministry of Justice considers it desirable that further refinement should not unduly delay the completion of the declaration.

Hungary

[2 January 1991]
[English]

20. International protection of the respect for human rights and fundamental freedoms is one of the foreign policy priorities of the Republic of Hungary. Since the rights of national, ethnic, religious and linguistic minorities are integral parts of universally recognized human rights, the regulation of these rights is an important and timely task. Minorities, enriching the life and culture of societies, are important links between countries, especially neighbouring countries; respecting and guaranteeing their rights contributes to national and international stability and enhances confidence and co-operation among States.

21. For all th e reasons the Hungarian Government welcomes and appreciates the work accomplished by the Commission on Human Rights in elaborating the draft declaration on the rights of persons belonging to national or ethnic, religious or linguistic minorities. It wishes to express the hope that by overcoming existing obstacles, finalization and adoption of the declaration will be possible. It would welcome it if increased international interest and attention regarding this subject would be reflected by finding more precise formulations relating to commitments by States for creating appropriate conditions that make it possible for minorities to develop their education, culture, language, religion, traditions and customs (e.g. right to have their own educational, religious and cultural institutions, right to establish organizations, etc.).

22. The Hungarian Government attaches priority to the finalization and adoption of the declaration, since this will pave the way for the international codification of minority rights, which it considers necessary.

23. It is the view of the Hungarian Government that the new standard-setting should include international control as well as viable individual complaint mechanisms.

24. The Government of the Republic of Hungary is ready to contribute actively to the achievement of these goals.

Norway

[19 December 1990]
[English]

25. The Norwegian Government supports the initiative of drafting a universal declaration on the rights of persons belonging to national, ethnic, religious or linguistic minorities. Norway is pleased to have this opportunity to comment on the present draft text which, in its view, lays a good foundation for further endeavours aiming to reach agreement on a universal declaration in this field.

26. In general Norway agrees with the approach itself of the draft declaration, which should apply to "national, ethnic, religious or linguistic minorities". We are of the opinion that it is not necessary to define this term. It is the view of the Norwegian Government that a universal declaration of this kind should not be limited to prohibiting discrimination of the said minorities, but should also recognize that special measures might be necessary in order to help a minority enjoy the same rights as the majority population. A provision to this end could most appropriately be inserted in article 1 of the draft declaration. This is also inconformity with Norway's interpretation of article 27 of the International Covenant on Civil and Political Rights, which implies that States accept the responsibility of contributing positively to enable minorities to maintain and develop their ethnic, cultural, linguistic or religious identity.

27. In addition, it is Norway's view that the draft declaration should clearly state the right of minorities to use their mother tongue freely in private as well as in public.

28. States should also be encouraged to give minorities adequate opportunities for instruction of their mother tongue or in their mother tongue and, wherever possible, for its use in dealing with public authorities.

29. Moreover, the declaration should state that minorities have the right to establish and maintain organizations or associations within their country and to participate in international non-governmental organizations. It should also state explicitly that persons belonging to national minorities may exercise and enjoy their rights individually as well as in community with other members of their group and that no disadvantage may arise for a person belonging to a national minority on account of the exercise or non-exercise of any such rights.

United States of America

[27 December 1990]
[English]

30. Ethnic and national differences and the tensions and hostilities engendered by them are in various parts of the world a most serious threat to peace. It is, therefore, of particular importance that the Commission on Human Rights try to come to grips with this problem and seek to set standards which, if promptly followed, would help reduce tension.

31. The draft declaration on the rights of persons belonging to national, ethnic, religious and linguistic minorities has been in the drafting stages for well over a decade. The Government of the United States has participated in this exercise, but regrets to observe that the current text contains certain flaws that would limit the contribution it would make toward the amelioration of existing problems. Although the current text touches on some of the key issues facing individuals who belong to minority groups, it offers insufficient guidance on how those issues should be addressed.

32. A second general observation is that the current text may unfortunately, if inadvertently, weaken human rights standards established in other international instruments. The current text, for example, borrows considerably from the Universal Declaration of Human Rights, but imposes new or broader limitations on some of the borrowed provisions. While the Government of the United States is certainly not opposed to reaffirming the standards established in the Universal Declaration, we are deeply concerned at the prospect of undermining any of those standards.

33. The Government of the United States therefore suggests that the focus of the draft declaration be made more narrow. The new declaration should deal exclusively with the rights of persons related to their membership in particular minority groups. The declaration should seek to protect these individuals from discrimination on grounds of their membership in such groups and to create an environment in which these individuals can preserve and protect the existence of their groups.

34. The new declaration need not reaffirm that individuals who belong to minority groups enjoy the same basic human rights and fundamental freedoms as all other individuals. As the current draft demonstrates, the attempt to restate these rights in a new declaration may well result in the adoption of language that actually weakens them. Moreover, once the process of reaffirming some of these general rights begins, it becomes necessary to reaffirm that minority individuals enjoy all of these general rights. Failure to reaffirm some of the rights will imply that minority individuals are not entitled to them.

35. The Government of the United States is also concerned about the manner in which the current draft addresses the rights of individuals who belong to religious minorities. In our view, the Declaration on the Elimination of all Forms of Intolerance and of Discrimination Based on Religion or Belief deals with these issues so fully that there is no need for a further effort at restatement. Accordingly, we urge that all references to individuals who belong to religious minorities be deleted from the draft, in favour of a preambular reference to the declaration on religious intolerance.

Council of Europe

[21 December 1990]
[French]

36. A number of projects in this area are in progress at the Council of Europe, but the texts concerned are still being discussed by the experts; as of now, no indication can be given as to whether they will be accepted by policy-making bodies.

37. The Council of Europe is also preparing a contribution to the meeting of experts on national minorities to be held in July 1991 in Geneva, in the framework of the Conference on Security and Co-operation in Europe.

38. Given the recent political changes in Europe, a number of legal and practical issues connected with the protection of minorities are likely to arise. It therefore seems premature for the Council to venture an opinion on the detail of the draft under discussion in the Commission on Human Rights.

39. The Council will nevertheless be happy to remain in contact with the Centre for Human Rights in the coming months.

Baha'i International Community

[4 December 1990]
[English]

40. The Baha'i International Community strongly supports the work undertaken to date by the Working Group in formulating a suitable declaration that will make an effective contribution to improving the human rights situation of minorities. We believe that the rights of persons belonging to minorities need to be fully protected, without discrimination, and that special efforts are required to enable minorities to maintain and pass on to the next generation the enriching and beneficial aspects of their culture, traditions and language.

41. At the same time, we believe that the goal of the enterprise at hand must not be separation. Human Rights will only become a reality for minorities if all human beings, while cherishing their unique individual and group identities, also develop an inner appreciation for the fundamental unity of the human race. In the Baha'i view, "the advantage of the part is best reached by the advantage of the whole". Only with such an appreciation of the bonds uniting all people can productive dialogue between minorities and majorities be sustained and lead to greater harmony and fuller enjoyment of human rights.

B'nai B'rith International, World Jewish Congress

[20 December 1990]
[English]

42. At the outset it should be stated clearly that the two organizations support fully the preparation and adoption of this declaration, if for no other reason than that it will assist in the implementation and interpretation of the principal provision on the subject of minorities in international instruments, namely Article 27 of the Covenant on Civil and Political Rights. This view is supported by the Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, Francesco Capotorti (United Nations Publication, Sales No. E.78 XIV.i (1979))

43. Several issues call for comment: namely, the definition of minorities; whether the term "national" should be included, a term not contained in article 27 ICCPR; whether the phrase "persons belonging to" minorities should be used as distinct from simply a reference to minorities.

44. It is appreciated that many of these questions will be resolved in the light of the technical review of the text by the Centre for Human Rights and the further drafting and elaboration of the text by the Working Group itself on this basis and the various comments received.

45. It is noted that a definition of the term "minorities" has not been attempted. None of the attempts to define this term has met all the complexities and different aspects as to what constitutes a minority. The abundant literature on this question, which these summary remarks in no way purport to analyze, includes citations from the Permanent Court of International Justice. Other attempts to define the term "minorities" have also been carefully reviewed, notably in the Capotorti study, following earlier attempts by the Sub-Commission itself in 1954. Subsequently a proposal concerning a definition of the term "minorities" was submitted by Mr. Jules Deschênes (E/CN.4/Sub.2/1985/31). While these definitions are helpful, none seems to be fully adequate, particularly in the light of historical experience as reviewed against contemporary developments.

46. Subject to resolution of the above points by the competent review bodies, support is expressed for maintaining the full use of the expression as contained in article 27 ICCPR, of persons belonging to minorities, since clearly for all the arguments advanced in the relevant literature and as cited in the relevant provisions of the draft declaration and elsewhere, rights of minorities can be enjoyed both at the individual level of the person and in community with other members of the minority group concerned. Moreover, the significance attached to the term "minority" used in isolation is, for the reasons already advanced, capable of many interpretations and constructions according to the context in which it is used.

47. The importance of the term "national" is recognized in the sense attributed to the increasing dimensions of the problem of national minorities. The term "national" has always had significance, particularly in the context of other international instruments and national laws, as is evidenced by article 1 (1) of the International Convention for the Elimination of All Forms of Racial Discrimination, defining racial discrimination to include "any distinction, exclusion, restriction or difference based on .... national or ethnic origin". The term "national or ethnic origin", if not identical, has an undoubted synonymous connotation in the context of the enumeration of the grounds of racial discrimination. The French law of 1 July 1972, and article 32 of the French law of 7 June 1977 dealing with different aspects of racial discrimination, support this interpretation.

48. The essential purpose of these comments is to underline the fact that, based on the particular experience of persecution of Jews throughout the ages, it can be stated as a matter of historical record that Jews have been persecuted as members of minority groups on all the enumerated grounds. Thus, Jewish minorities have been denied their minority rights both as individuals and as entire communities, as national/ethnic, religious or linguistic minorities, and have been deprived of the right to enjoy their own culture, to profess and practise their own religion, and to use their own language. The most notorious example within living memory, as need hardly be recalled, were the acts of genocide against Jewish communities in Europe during the Second World War.

49. It is for this and related reasons that the experience of the minorities protection régime under the League of Nations between the two world wars has special relevance when viewed against the recent developments of persecution of national minorities in Eastern and Central Europe in recent months.

50. Indeed, this problem has reached such significant proportions that the proposal for a convention on minority rights may have particular relevance, in as much as this might well prove to become an international requirement, if present trends are to continue. (See the monograph "Towards a minority convention, its need and content" by Dr. S.J. Roth, to be published in the 1990 Israel Yearbook on Human Rights).

51. So far as the first reading of the draft declaration is concerned, draft article 2 has central importance in calling for the right of minorities to be protected against any activity which threatens their existence or otherwise prevents their full enjoyment and exercise of universally recognized human rights and fundamental freedoms.

52. Particular importance is attached to the commitment of all States undertaking to adopt legislation or other appropriate measures to prevent and combat such activities. Indeed, the emphasis on practical measures to ensure the full enjoyment of minority rights, in addition to prohibiting any threats or actions against them, is to be welcomed.

53. However, these comments also wish to stress the prior and fundamental need for States to recognize threats to minorities and minority rights in the form of persecution, discrimination or other denial of equality, which regrettably has characterized the violation of minority rights in the past.

54. The close association of national/ethnic persecution of minorities has been strongly emphasized in one particular regional context. In this connection, attention is drawn in particular to the provision of article 14 of the European Convention on Human Rights which, in referring to the principles of non-discrimination in the enjoyment of the rights and freedoms contained in this Convention, also mentions "discrimination ..... on any grounds such as ..... association with a national minority".

55. In the context of the protection of minorities in the present realities of Central and Eastern Europe, there is clearly an advantage in ensuring such protection in the widest possible terms under relevant international or regional instruments.

56. The problem of discrimination against minorities is of course not confined to Central and Eastern Europe. The joint Declaration against racism and xenophobia of 11 June 1986, signed by the three Presidents of the principal institutions of the European Community, is directly to the point. It will be recalled that this Declaration vigorously condemned all forms of intolerance, hostility and the use of force against persons or groups of persons on the grounds of racial, religious, cultural, social or national differences. The Declaration was very much influenced by the findings of the Evrigenis report of the European Parliament, which analyzed the phenomena of racism and racial hatred against minority groups. A follow-up report of the committee of enquiry of the European Parliament into racism and xenophobia, published in 1990, has shown an alarming increase in some instances of incitement to hatred and violence against various minority groups throughout

Europe. Amongst these phenomena has been prominently recorded the disquieting resurgence of antisemitism, together with other forms of racism and xenophobia directed against other ethnic, national, religious, cultural and linguistic minorities.

57. The detailed recommendations for action were adopted by the European Parliament on 9 October 1990. The measures contained in these recommendations closely parallel the letter and spirit of the draft declaration under examination, and in this respect we endorse in full the provisions of draft article 4 calling on all States to take legislative and other appropriate and effective measures, especially in the fields of teaching, education, culture and information, to promote and protect the human rights and fundamental freedoms of persons belonging to minorities.

58. We also believe that in the context of the resurgence of denial of rights of national minorities in the specific Central and Eastern European context, two further developments have relevance. While it is appreciated that the human rights documents emanating from the Conference on Security and Co-operation in Europe (CSCE), as enshrined in the Helsinki Final Act, are not necessarily of binding character in the sense of a multilateral treaty or convention, the commitments nonetheless entered into by the 34 States in question have particular importance in the light of contemporary events. It is of course appreciated that the definition of national minorities in the CSCE context does not fully correspond to the nomenclature of the relevant United Nations instruments, but there can be little doubt that the documents in which the commitments for the protection of national minorities are referred to, define national minorities in essentially the same terms as the United Nations instruments, emphasizing the ethnic, cultural, linguistic and religious aspects. The attention of the Working Group is therefore especially drawn to the contents of the Copenhagen document drawn up by the 34 States of the CSCE at the meeting held in that city from 5 to 29 June 1990, articles 32 -39 of which specifically extend the rights which the CSCE States recognize for national minorities. These rights refer, amongst others, to the preservation and development of their identity, their linguistic rights and the establishment and maintenance of the minorities' own educational, cultural and religious instruments, organizations or associations.

59. However, we wish also to emphasize that the contemporary resurgence of antisemitism as a particularly pervasive and pernicious form of discrimination and incitement to hatred against a specific minority was recognized for the first time in an international instrument. Article 40 of the text of the Copenhagen document is of special relevance in this context. It commences: "The participating States clearly and unequivocally condemn totalitarianism, racial and ethnic hatred, antisemitism, xenophobia and discrimination against anyone, as well as persecution on religious and idiological grounds". This is thus the first international instrument which specifically names antisemitism as a racist and discriminatory practice against a minority whose persecution as such throughout history has been one of the most characteristic and persistent phenomena in the sad chronology of intolerance, hatred and prejudice. The full text of this provision of the Copenhagen document is annexed hereto.

60. It may be remarked in passing that while in the earlier stages of the drafting of the Convention on the Elimination of All Forms of Racial Discrimination, specific reference to antisemitism had been included, it was finally excluded for extraneous political reasons.

61. It is for the reasons cited in connection with this provision of the Copenhagen document that we recommend that article 2, paragraph 2 of the draft declaration should include after the words "....all States shall undertake to adopt legislation or other appropriate measures to prevent and combat such activities", the wording inspired by article 40.1 of the Copenhagen document: "...as may be necessary to provide protection against acts that constitute incitements to discrimination, hostility, hatred or violence...".

62. The second specific matter on which we wish to comment refers to the recent Charter of Paris, signed by the 34 CSCE Heads of State or of Government on 21 November 1990, dealing inter alia with the problem of national minorities, expressing determination to promote the rights of national minorities, and referring concretely to their ethnic, cultural, linguistic and religious identity. It will be recalled that in order to strengthen and improve the protection of minorities, it was decided to convene a meeting of experts on national minorities in Geneva from 1 to 19 July 1991. The Paris Charter has given concrete recognition in this precise context to its resolve to deal with the underlying causes of persecution of minorities. The Charter states at this point: "We express our determination to combat all forms of racial and ethnic hatred, antisemitism, xenophobia and discrimination against anyone as well as persecution on religious and ideological grounds."

63. We strongly urge that in the review of the first reading of the draft declaration, due attention and consideration be given to these recent and most significant developments which should appropriately influence the further elaboration of the text by the Working Group at the forty-seventh session of the United Nations Commission on Human Rights.

International Federation of Human Rights

[14 December 1990]
[French]

64. As regards the need for a declaration of rights, the question of defining specific rights for minorities arose during the drafting of the Universal Declaration of Human Rights and posed a number of problems.

65. Because the Universal Declaration of Human Rights is silent on the question of minorities, later international and regional instruments, and their implementation and monitoring arrangements have sidestepped the specifics of the issue. Nevertheless, the protection of minorities remains a major and explicit concern of States and international organizations.

66. Attempts to establish a special international legal basis for the protection of minorities have hitherto always been unsuccessful. The main obstacles have been (a) the inability to define a "minority"; (b) the undesirability of establishing a catalogue of rights distinct from those universally recognized; and (c) the difficulty of restricting the circle of intended beneficiaries.

67. These obstacles have had the advantage of highlighting the illogicality of establishing, a general prescription for special protection outside the canon of ordinary human rights law.

68. The question is, how to avoid excluding people belonging to minorities from the general enjoyment of human rights - in other words, how to ensure that they are allowed universally acknowledged rights. Uniform and rigid rules cannot work in an area where the differing nature of the links which in their various ways establish membership of a minority community and the particular forms that they take in each State create a host of different situations to be allowed for.

69. Depending on the rights and circumstances involved, therefore, people belonging to minorities will exercise and assert their fundamental rights in many different and specific ways.

70. It is not so much through a declaration of rights as through international recognition of the most advanced practices and legislation in the form of model prescriptions that a United Nations instrument may be able to create the framework for equality of treatment, guaranteeing to all minorities that human rights are universal and indivisible.

71. If one considers the state of the law on the subject, both lex lata and lex ferenda, one finds that the domestic legislation and practice of many nations and international and European multilateral and bilateral law use protection clauses and special enforcement procedures to ensure equal treatment in the exercise and protection under ordinary law of the human rights and minorities in their territory, enabling them to:

(a) Exist as groups;

(b) Enjoy protection of their family and personal status;

(c) Use their languages in social interactions generally, in their relations with the public services and administrative and legal authorities, and in local assemblies;

(d) Receive and provide education in their own languages;

(e) Foster and protect their heritage and cultural activities;

(f) Enjoy unimpeded relations with other populations belonging to the same culture, whether or not a frontier separates them, through such means as multilateral conventions respecting the cultural unity of territories divided by frontiers;

(g) Be represented politically;

(h) Administer themselves or exercise local autonomy where a given area is culturally uniform;

(i) Participate effectively in affairs of State and in decisions affecting the regions where they live.

72. The draft Declaration appears to be a backwards step from provisions of this kind already in force in various countries.

73. The study which the Sub-Commission asked Mr. Eide to carry out on "Possible ways and means of facilitating the peaceful and constructive solution of problems involving minorities", which will survey national institutions and procedures for handling ethnic relations and situations

involving minorities, will be very helpful to the Working Group, enabling it to proceed knowing exactly what is available and, accordingly, produce a draft Declaration in line with the most advanced provisions on the subject.

74. At the most recent session of the Working Group on minorities, the Federation put forward a number of proposals which were summarized in paragraph 2 of the Group's report (E/CN.4/1990/41):

IV. THE ORGANIZATION OF FUTURE WORK

52. In light of the completion of the declaration in first reading, various suggestions and comments were offered as to how the Working Group could best complete its work at the second reading. The view was raised that the complexity of the minority issue had not been fully and comprehensively addressed by the Declaration which should set out more clearly the rights and responsibilities of both States and minorities. A request was made for the submission of four proposals to be considered at the next session of the Working Group relating to the minorities' right to specific parliamentary representation; multilateral conventions respecting the cultural unity of territories; unimpeded relations between populations sharing the same culture but separated by frontiers; autonomous administration; and, for the future, the possibility of establishing an international minority council should be considered.

75. The Federation also proposes the inclusion of an article reading:

In certain cases, a State may delegate some of its powers so as to permit autonomous territorial or personal administration by a minority group of matters of particular concern to it.

76. Such measures are already applied in many States, in Europe especially, under arrangements tailored to suit each case.

77. As regards autonomy, Mrs. Palley was equally clear in paragraph 18 of her study:

> While autonomy is not expressly required by article 27, it is a means of protecting and promoting the cultural, religious and linguistic rights with which article 27 deals exclusively. It is moreover a means of implementation which appears to be adaptable to a variety of different social, economic and political systems, provided of course that the minority group in question has some geographical character and is not largely dispersed among other sections of national society.

78. On the subject of unimpeded relations between populations sharing the same culture but divided by frontiers, the Federation suggests the following wording:

(a) Any person belonging to a minority is entitled to associate and have relations with other members of the same group in particular, beyond as well as within national frontiers;

(b) States with common frontiers in whose territory there live persons separated by those frontiers who belong to the same minority group should adopt bilateral or multilateral agreements facilitating the free movement of such persons.

79. Such agreements have been concluded by Italy with several contiguous States, including Austria and Yugoslavia.

80. The Federation also insists that its proposal regarding the possibility of setting up a conciliation and mediation mechanism to prevent or resolve any conflicts involving minorities needs to be added to the agenda for the next meeting of the Working Group.

81. Numerous conflicts involving minorities have taken place during the year since the last meeting of the Working Group; this in our view calls for urgent consideration of possible action by the United Nations to maintain peace and security.

International Federation Terre des Hommes

[10 January 1991]
[Spanish]

82. The text of the declaration is generally concerned with rights which can guarantee minorities their distinctive differences. The Federation believes some changes are necessary to prevent misinterpretations of the text. These are as follows:

1. The expression "persons belonging to" should be deleted throughout the text of the declaration, leaving only the word "minorities". This would be an improvement because the subjects would be regarded as collective entities;

2. References should not be to "national" minorities, just to minorities. Otherwise the first act of discrimination will be committed by the United Nations itself in omitting to recognize them;

3. All the passages mentioning that the rights covered by the Declaration must be exercised in accordance with national legislation should be deleted. The point seems obvious.

Four Directions Council

[2 December 1990]
[English]

83. Subjects of the rights contained in the declaration: In our view, the rights contained in the declaration are both individual and collective in character. Individuals enjoy these rights only because of their membership in a group, and in most instances can only exercise these rights effectively in community with the rest of the group. For example, the right to cultural development in article 3 (2) of the declaration is meaningless as an individual right, since culture, language, and customs are manifestations or expressions of organized social life.

84. One possible approach would be to go through the text of the declaration, and determine whether the rights contained in each paragraph have more of a collective ("minorities") or individual ("persons belonging to minorities") character. In our view, such an exercise would be tedious and inconclusive. Instead, we think the working group should adopt consistent terminology

throughout the declaration, inserting an explanatory clause as an additional sub-paragraph in article 5. If the subject of each article were "persons belonging to minorities", for example, the explanatory clause in article 5 would be:

5. Persons belonging to minorities may exercise their rights individually, as well as in community with the other members of their group.

Likewise, if the working group agreed to use "minorities" in each article, which has the virtues of brevity and simplicity, article 5 could include the following explanation:

5. As used in this declaration, "minorities" refers to the persons belonging to a national, ethnic, religious or linguistic minority, exercising their rights individually or in community with the other members of their group.

85. Legislative limitations: bracketed references to "national legislation" in articles 3 (3) and 4 (2) imply that national laws can override the rights to freedom of movement and expression. This is unacceptable, since these rights are already contained in articles 12 and 19 of the International Covenant of Civil and Political Rights, without so broad a limitation. We suggest that these two sentences be deleted, and replaced if necessary by an additional sub-paragraph in article 5 as follows:

6. The rights contained in this declaration shall be reflected in appropriate national legislation, and exercised in accordance with relevant international human rights instruments.

86. Groups included or excluded: the term "national" minorities has special meaning in Europe, as is elaborated in the concluding document of the Copenhagen meeting of the Conference on Security and Co-operation in Europe (CSCE). It would be inappropriate, for this reason, to exclude it from the text of the declaration, even though it may require an explanation, as part of the final report of the Working Group, that "national" minorities, in this sense, may not exist in other regions.

87. We are opposed to any further effort to define or categorize minorities in the declaration. Like "peoples", "minorities" is a concept that has different meanings in different regions of the world, and in different historical contexts. Practice will prove to be a better guide to interpretation, than a purely theoretical definition at this early stage of the work of the United Nations in the field of protection of minorities.

88. Renumbering of the articles: for reasons of logical order, we suggest the following renumbering of articles 5 through 8 and the "new article":

Article 5	was Article 7	(on participation)
Article 6	was Article 5	(savings clauses)
Article 7 (a)	was Article 6	(implementation by States)
Article 7 (b)	"new article"	(spirit of understanding)
Article 8	was article 8	(implementation by United Nations)

89. Implementation measures: the Working Group has an important role to play, at this stage of its work, in recommending measures for the implementation of the declaration after its adoption. In its current form, the declaration is broad and general, as befits a statement of policy, as opposed to a binding legal instrument. It will not be "enforced," so it can only be useful as the basis for a programme of national and international action. We support the four points adopted at the Working Group's last session, "to be included within a resolution accompanying the Declaration," as the foundation for such a programme.

International League for the Rights and Liberation of Peoples

[13 December 1990]
[French]

90. Are the rights of a group - minorities - or the rights of persons belonging to (national or) ethnic, religious, cultural or linguistic minorities, at issue? This point ought to be clarified.

91. The draft alternates between the adjectives "national" and "ethnic". Would it not be more sensible to begin by spelling out what is meant by the notions of nation and ethnic group?

92. The text does not define the term "minority". Who, moreover, decides who belongs to a minority? Do national and/or international authorities do so? This question is extremely important since it is linked to the kind and extent of the detailed information required of minorities (name, numerical size, area(s) found and social and economic characteristics).

93. The rights of minorities covered by the text are general rights sometimes described in very vague terms, notably in the case of education and teaching. Furthermore, the text is silent on the very important topic of employment and the sphere of social activities.

94. The text's treatment of the duties of States towards minorities is very sparse. Notions such as integration and assimilation are absent.

95. The text makes no stipulations as to machinery for the protection of minorities, including opportunities for appeal to national authorities and for seeking redress at the international level.

Minority Rights Group

[16 January 1991]
[English]

96. MRG believes that it is crucial to take early measures to resolve possible conflicts arising from minority situations. Our experience from over 20 years of research on how to avoid violent conflicts and fragmentation of States has shown that it is important to enable minorities to play a full role in States, rather than to marginalize minorities or deny existence. For MRG a full role in a State means, inter alia, having minorities participating effectively in all sectors of the society, in all levels of decision-making and in all aspects of administration.

97. A way to ensure that minorities have this constructive role in society is to protect them by ensuring equal rights in their lives. Non-discrimination is a universally recognized principle and rule in international human rights law, but experience shows that the existing human rights law has been insufficient in ensuring equality of opportunity between the majority population and the minority group(s) and the realization of equality in practice.

98. This paper is MRG's response to the Secretary-General's invitation. Although the time given to provide a reply was short, it was possible to anticipate this as the Commission on Human Rights has a special Working Group that has been discussing a draft declaration since 1978 and the Commission itself passed the first reading of the draft in March 1990.

99. The MRG wishes to support the constructive moves towards a declaration on minorities while recognizing the limitations of any text and the practical limitations of a declaration. The non-governmental World Congress on Human Rights in 1990 in India noted the need for a United Nations declaration on minorities and passed a resolution on this subject.

100. The General Assembly has in its resolution 41/120 given the following guidelines for standards setting activities in the field of human rights:

(a) Be consistent with the existing body of international human rights law;

(b) Be of fundamental character and derive from the inherent dignity and worth of the human person;

(c) Be sufficiently precise to give rise to identifiable rights and obligations;

(d) Provide, where appropriate, realistic and effective implementation machinery, including reporting systems;

(e) Attract broad international support.

101. In this paper MRG will make recommendations on the draft declaration in accordance with the General Assembly resolution and the principles of MRG while providing an expert commentary. In order to identify the most adequate principles for a declaration on minority rights, consideration will also be given to instruments and principles on minority rights set down by regional bodies such as the Conference on Security and Co-operation in Europe (CSCE).

102. MRG would also like to suggest to the Secretariat to bear in mind the instruments and principles on minority rights set down by these regional bodies, when carrying out the work on the technical review of the draft declaration, and especially to look for instruments and principles set down by the African and Asian regions, as well as the valuable constitutional rights in certain States.

General comments on contents

103. The Declaration should:

1. Stabilize the core of existing protection: the little that exists must not be lost;

2. Contribute to the interpretation and clarification of existing instruments;

3. Give substance to framework principles: the prescriptions of present law are necessarily general;

4. Remedy substantive lacunae in existing law;

5. Specify the essential and appropriate rights of minorities, omitting the non-essential;

6. Strike a fair balance between minority rights, and duties to the community;

7. Set out the extent of State obligations;

8. Stress the worth of minorities and the indispensability of a régime of minority rights to national and international stability.

Comments on the Title

104. The title should reflect as accurately as possible the substantive content of rights. Obviously, some resolution of the question of whether "minorities" or "members of minorities" have the rights in question must be achieved, and also the question of whether it is appropriate to include "national" minorities. The point about national minorities is discussed below in the discussion of draft article 1. On "individual" or "collective" rights, the general "individualist" context of human rights must be borne in mind. However, living instruments of international law do not respect doctrinal purity in any absolute sense. In the context of the draft declaration, what matters is not insistent repetition of one formula or another, but the logical correlation between the right in question and the purported holder of that right. Accordingly, the present commentary alludes to the appropriate description of the right-holder on an article-by-article basis.

MRG's recommendations on the title

105. MRG recommends the deletion of the word "or" between the words "National" and "Ethnic".

Measure of implementation

106. The possibility of an accompanying resolution incorporating measures of international implementation would considerably strengthen the declaration. In view of the relative slowness of the United Nations in arriving at the present text and the lack of immediate prospects for a treaty on the rights of minorities, the measures assume considerable importance. The requirement -(iii)- that minority statistics are to be provided by States is particularly valuable in the context of States continuing to deny that they have any minorities within the scope of the Declaration. In view of what has been said in this commentary on relativity of obligations, accurate factual assessments of minority presence and social and economic conditions in States are vital.

COMMENTS ON THE PREAMBLE

United States of America

[27 December 1990]
[English]

107. The second preambular paragraph refers to "the equal rights of men and women and of nations large and small". An analogous preambular paragraph in the Universal Declaration of Human Rights refers only to "the equal rights of men and women". While nations certainly have rights, only individuals have "human rights". Given that this declaration will be in the nature of a human rights instrument, the Government of the United States believes that it would be appropriate to delete the phrase "and of nations large and small" from the second preambular paragraph.

108. The third preambular paragraph lists a variety of international instruments in the field of human rights.

109. As noted above, the Government of the United States believes that specific mention should at very least be made of the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief. The principles set forth in that Declaration are of particular importance to persons belonging to many minority groups.

110. The phrase "persons belonging to" appears in brackets before the word "minorities" many times throughout the operative paragraphs. The Government of the United States firmly believes that this phrase must be retained without brackets. The declaration is based on the premise that individuals who happen to be members of minority groups enjoy certain rights and protections as incident to their membership in such groups. The declaration should not assert or imply that these rights and protections attach to the groups themselves.

Minority Rights Group

[16 January 1991]
[English]

111. Paragraph 1: seems appropriate in view of the fundamental law-making contribution of the Charter of Human Rights.

112. Paragraph 2: [Reaffirming] [Reiterating] [Declaring] faith in fundamental human rights .... This should be resolved in favour of eliminating the reference to "declaring"; general human rights have already been "declared" in the Universal Declaration of Human Rights. There is no objection to "reaffirming" or "reiterating", though some thought might be given to "confirming" faith in rights. In General Assembly resolution 96 (1) the States voted to "affirm" that genocide was a crime under international law; in article I of the Genocide Convention, this became "confirm". Perhaps a similar transition is appropriate here in view of the acknowledged standing of human rights.

MRG's recommendations on paragraph 2

113. MRG recommend the substitution of the word "Confirm" for the words "[Reaffirming] [Reiterating] [Declaring]".

114. Paragraph 3: the purpose of this paragraph is to indicate existing legal principles on minority rights, stressing the continuity of the declaration with them. Some such reference is in principle desirable, if only to rebut the argument that minority rights are antithetical to "universal" human rights. The paragraph should reach out to the universal instruments; the regional and bilateral instruments are primarily European but the declaration is intended for universal application. Subject to drafting style and consistency, a reference to the International Covenant on Civil and Political Rights appears appropriate.

MRG's recommendations on paragraph 3

115. MRG recommend the insertion of the words "the International Covenant on Civil and Political Rights," after the words "the Universal Declaration of Human Rights,".

116. Paragraph 4: there is a difference between "inspired by" and "based on". If the declaration is only intended to contribute to the interpretation of article 27, "based on" expresses better this desideratum. If, on the other hand, the intention is also to supplement and extend the article regarded as the first step in a process of development of a rights discourse, "inspired by" is better. The looser ("inspired by") connection is preferable especially if the reference to rights of "persons belonging to" is retained; the declaration would not then be so closely tied to the article which has any limitations (supra).

MRG's recommendations on paragraph 4

117. MRG recommends the deletion of the words "[Based on]".

118. Paragraph 5: this is an important affirmation on behalf of the minorities and MRG recommends that it should be retained.

119. Paragraph 6: the reference to the exceedingly complex Declaration on Principles of International Law adds little or nothing to the text and could introduce unnecessary complications. Inter alia, it encourages arguments on the relationship between the principles contained therein such as non-intervention and minority rights, which ought to be accommodated through natural evolutionary processes.

120. Paragraph 7: overlaps with paragraph 5. The combination of the sentiments expressed in paragraphs 5 and 7 is that minority rights contribute to national and international stability and friendship etc. The two aspects could be combined in one positive paragraph. The reference to "the existing constitutional framework" (paragraph 7) is undesirable since that framework is as likely to hinder minority rights as to promote them. Probably what States require is that minorities show respect for the institutions of the State. Such respect cannot be absolute, but will depend upon the general justice of State institutions.

MRG's recommendations on paragraph 7

121. MRG recommends the substitution of the words "will contribute to the respect of the territorial integrity of States, promote economic, social and cultural development and enhance the stability of the States in which they live and" for the words "as an integral part of the development of society as a whole and within the constitutional framework, would in turn".

122. Paragraph 8: serves as a reminder of the body of law that can be used to interpret the declaration. The range of reference is probably sufficient, bearing in mind that the declaration will emanate from the United Nations. It should not be narrower, since the work of developing minority rights by the general United Nations bodies (the Commission on Human Rights and the Sub-Commission on Prevention of Discrimination and Protection of Minorities) is broad, conceptual and programmatic; the work of the Human Rights Committee relates mainly to working through the implications of article 27 of the Covenant on Civil and Political Rights.

MRG's recommendations on paragraph 8

123. MRG recommends the insertion of the words "other regional intergovernmental forums and" before the words "the bodies established".

124. Paragraph 9: is "international law" an acceptable substitute for "international human rights instruments"?

COMMENTS ON ARTICLE 1

Germany

[7 January 1991]
[English]

125. The prohibition of discrimination should not, as envisaged in paragraph 2, be confined to the enjoyment of human rights. Preference should be given to a general prohibition of discrimination, and should include the principle of equality before the law. The wording might be modelled on article 26 of the International Covenant on Civil and Political Rights.

United States of America

[27 December 1990]
[English]

126. Article 1, paragraph 2 seeks to reaffirm that persons who belong to minority groups enjoy the same human rights and fundamental freedoms as all other persons do. To make this point more clearly, the Government of the United States suggests that the last phrase of this paragraph be amended to provide "and all other internationally recognized human rights and fundamental freedoms". This paragraph, as amended, would obviate the need for any further reaffirmation in the declaration of rights recognized in other instruments.

Minority Rights Group

[16 January 1991]
[English]

127. Paragraph 1: (a) The question of a definition, and the basic description of "minority" require comment. By resolution 1984/62 of 15 March 1984, the Commission requested the Sub-Commission to prepare a definition of "minority". A report prepared by Mr. J. Deschenes (E/CN.4/1985/31 and Corr.1) was duly transmitted to the Commission together with the summary records of the Sub-Commission's discussions. However, the Working Group agreed in 1986 to postpone the question (E/CN.4/1986/43, para. 12) and the text of the draft declaration does not attempt a definition. Accordingly, there is only a description of the relevant groups "[national or] ethnic, linguistic and religious". In various international instruments the relevant descriptions of groups are: "racial, religious or linguistic" (articles 8 and 12 of the Polish Minorities Treaty); "national, ethnical, racial or religious" (article II of the Genocide Convention); "racial or ethnic" groups to which "special measures" can be applied (article 1(4) of the Convention on Racial Discrimination); "ethnic, religious or linguistic" (article 27 of the Covenant on Civil and Political Rights); "national minorities" (article 5(c) of the Convention against Discrimination in Education). Grounds on which cognate forms of discrimination are prohibited are almost inevitably wider: e.g. "race, colour, descent, or national or ethnic origin" (article 1(1) of the Racial Discrimination Convention).

128. The draft follows article 27 of the Covenant on Civil and Political Rights, stressing the affinity of the two instruments. The major difference is the potential addition of "national" to the declaration, a term favoured in Eastern Europe. The Soviet Union defined "national" at the ninth session of the Commission as "an historically formed group of people characterized by a common language, a common territory, a common economic life and a common psychological structure manifesting itself in a common culture" (E/CN.4/SR.369, para. 16). "National" in this sense is a relatively narrow term. It can also be confused, and frequently is confused, with the purely political/legal sense of the word, as in "Brazilian nationals". "Ethnic", on the other hand, is a wider, more flexible term (free for example, from territorial associations) implying that groups are protected even before they reach the dimensions of a "national" group. In the context of a universal instrument, the more flexible term is to be preferred. Further, "national" retains European overtones, which may limit its general acceptability; in African and Latin American contexts, assigning rights in the context of "ethnic" identity may appear less threatening to the States.

129. On the need for incorporating a definition of the word "minority", opinions clearly differ. Two much-discussed definitions are set out by Capotorti and Deschenes, but it is not proposed to choose between them. Perhaps it is enough to note that the absence of definition could facilitate evasions by States of their obligations through claims that there are no minorities in their territory. However, the Human Rights Committee in the operation of article 27 has taken a largely commonsense view and does not appear to have been unduly impeded by the lack of further juristic precision.

130. The absence of definition does, however, leave some puzzles. For example, in considering whether the State should act positively to promote minority culture, etc., is it necessary to insist that the minorities are its own nationals or citizens? If it is not, then is the host State expected to support "foreign" culture? The tradition on international law reflects the narrower view: the "protection of aliens" is one institution; the "protection of minorities" is another, and State obligations have a finite extent. Without exploring all the ramifications of a definition, the text as a whole might gain if it were made clear that the focus of minority rights is on those who possess the citizenship or nationality (in the legal sense) of the State in question. This was the practical limitation on rights expressed in the régime of the League of Nations which, even in the context of the present universal system of human rights, appears fully justified.

131. (b) The identity rights is a key right and is properly included. The right most appropriately correlates with the group rather than individuals. The function of "without any discrimination" in this context is unclear. At some point in the text, however, there must be a general reference to the rule of non-discrimination, on the premise that whatever specific rights they may possess, members of minorities are entitled to universal rights on a non-discriminatory basis. Article 1 would be appropriate for making such a statement. The minorities, according to paragraph 1, have the right to "the promotion of" their identity as well as respect for this identity. This is a valuable addition to the scheme of article 27 of the Covenant on Civil and Political Rights, in that it makes clear what may only be implied in the latter article (in the interpretation above). Further, the negative wording of article 27 is eclipsed in the draft article 1 by a positive statement of minority rights.

MRG's recommendations on article 1, paragraph 1

132. (a) The draft declaration in the title and throughout the rest of the declaration lists different groups as beneficiaries: "national, ethnic, religious or linguistic minorities". MRG is of the opinion that a description of the beneficiaries is actually providing a sufficient definition. This description is precise enough to identify the beneficiaries of this declaration (other declarations cover other groups of people), and a definition of each word of the phrasing is not necessary.

133. The draft declaration seems to be inconsistent in the description used in the different provisions. The title of the draft is mentioning "national or ethnic, religious or linguistic minorities", whereas article 1 mentions "national or ethnic, religious and linguistic minorities" and the new article mentions "national, racial, ethnic and linguistic minorities".

134. The same description should be used throughout the text, and MRG recommends to use the description suggested for the title: "national, ethnic, religious or linguistic".

135. (b) Where the phrase "persons belonging to minorities" is used alone, it indicates that the granted rights is an individual right. Following the preambular paragraph 4, the draft declaration has been "inspired by" [based on] article 27 of the Covenant on Civil and Political Rights. The declaration should therefore at least use the phrase of article 27 "persons belonging to minorities - in community with other members of their group" throughout the whole text. The suggestion will be recommended as new article 1, paragraph 2.

136. Paragraph 2: the human rights in question are more than adequately secured in a range of "universal" instruments, and do not relate to the specifics of the case for minorities. A more appropriate right in the context of the first article in the declaration is the right to existence (discussed in relation to article 2, infra).

MRG's recommendations on article 1, paragraph 2

137. MRG recommends the inclusion of a new article 1, paragraph 2 with the following wording:

> 2. Persons belonging to minorities can exercise and enjoy their rights as set out in this declaration individually as well as in community with other members of their group.

The original article 1, paragraph 2 becomes article 1, paragraph 3.

COMMENTS ON ARTICLE 2

Germany

[7 January 1991]
[English]

138. The relationship between the concept of propaganda and freedom of expression does not seem clear. The definition of prohibited activities and expressions of opinion should be geared even more closely to article 20 of the International Covenant on Civil and Political Rights or article 9 of the International Convention on the Elimination of All Forms of Racial Discrimination.

Norway

[19 December 1990]
[English]

139. The reference to "their respective constitutional processes" in article 2, paragraph 2 could be interpreted as limiting the States' obligations. Therefore Norway believes that it would be more appropriate to commence this paragraph as follows, "All States shall undertake ...". The rest of the paragraph should be maintained as it stands.

United States of America

[27 December 1990]
[English]

140. Article 2, paragraph 1 states that persons belonging to minorities have the right to be protected against certain activities, including propaganda. The Government of the United States has doubts about retention of the phrase "including propaganda". In our view, Governments should generally not be given licence to censor the expression of ideas due to their content. Instead, it might be more useful to replace the concept of suppressing propaganda with the more limited notion of preventing individuals from inciting others to violence against members of minority groups.

141. Article 2, paragraph 1, subparagraph (ii) would protect minority individuals from any activity which "(interferes with their freedom of expression or association) (or the development of their own characteristics)". The Government of the United States believes that the second bracketed phrase is too vague and would be too difficult to implement. We suggest replacing it with the phrase "or their cultural development".

International Federation Terre des Hommes

[10 January 1991]
[Spanish]

142. The phrase "directed against minorities" in article 2, paragraph 1, should be deleted. Propaganda may not be aimed directly against any group but it can still be discriminatory. Nothing should be deleted from subparagraphs (i) and (ii). The expressions "or identity" and "interferes with their freedom of expression or association or the development of their own characteristics" should thus be retained.

Four Directions Council

[2 December 1990]
[English]

143. Article 2(1). We support the removal of all the square brackets, and suggest that subparagraph (ii) be re-worded as follows, in line with the 1978 UNESCO Declaration on Race and Racial Prejudice:

> "interferes with their freedom of expression, association, or cultural development;"

144. Article 2(2). For greater clarity, we suggest replacing the text in square brackets with the following words: "as well as any relevant international treaties to which they are parties".

Minority Rights Group

[16 January 1991]
[English]

145. Paragraph 1: the reference to existence in subparagraph (i) is important. The "right to existence" was set out in article 1 of the original Yugoslav draft declaration. If one takes the rights of minorities in order, it can be argued that the right of existence comes first, even if we accept that it is only physical existence that is protected (supra on the Genocide Convention). The right is implied in the Genocide Convention for a range of groups, but it is appropriate in the declaration (a) to express the right, and (b) to target minorities as direct beneficiaries. Existence is a group right in this context.

146. In subparagraph (ii) the reference to freedom of expression and association appears to have strayed in from other instruments on human rights and could be deleted. In any case, subparagraph (iii) takes care of freedom of expression and association, which are universally recognized rights.

147. The whole article should form a logical counterpart to earlier statements of basic rights. A reformulated structure would then be: article 1 - rights to existence and identity; article 2 - threats to existence and identity. If deemed appropriate, threats to the enjoyment of universal rights could also be referred to, subject logically to a previous statement of the entitlement of members of minorities to all human rights on a non-discriminatory basis.

148. Paragraph 2: given the present structure or a reformulated one, this is unfortunately phrased - the references to constitutional processes and international treaties are redundant. The paragraph would lose nothing if it simply began "All States ...".

MRG's recommendations on article 2, paragraph 2

149. MRG recommends the deletion of the words "In accordance with their respective constitutional processes and in accordance with the relevant international treaties to which they are parties" to have consistency between article 2(2) and article 4(1).

COMMENTS ON ARTICLE 3

Germany

[7 January 1991]
[English]

150. The subordination of rights to national legislation, as envisaged in paragraph 3, is apt to erode these rights to a large extent and should be deleted.

Norway

[14 December 1990]
[English]

151. The brackets in the first part of article 3, paragraph 2, should be deleted to make it clear that "all States shall take measures to create favourable conditions to enable minorities to express their characteristics, ...".

152. The rest of the paragraph should be maintained as it stands, and the brackets around the word "education" should be deleted.

153. In article 3, paragraph 3, the brackets around the words "and with other minorities" should be deleted. The last sentence of this paragraph, in brackets, should be deleted.

United States of America

[27 December 1990]
[English]

154. Article 3, paragraph 1 provides that persons belonging to minorities have the right, inter alia, "to use their own language". The Government of the United States firmly supports this in principle. The right of a particular minority to use its native or historical language freely can be an important element in preserving its cultural identity. However, it must also be recognized that in some countries the existence of numerous linguistic minorities can make it difficult, if not impossible, for the Government to interact with members of each minority in their own language. In such circumstances, Governments should allow members of such minorities to use their own language among themselves, but in turn must be permitted to require such individuals to use a particular language (or languages) when dealing with Government officials.

155. Article 3, paragraph 3 includes a final, bracketed sentence that would make the right of persons belonging to minorities to leave any country, including their own, and to return to any country subject to national legislation and relevant international human rights instruments. The Government of the United States believes that this bracketed sentence should be deleted because it suggests that the rights protected by the Universal Declaration could readily be circumscribed by national legislation. If it is

retained, the reference to national legislation should at least be deleted. In the Universal Declaration of Human Rights, the right to leave is not subject to such a broad limitation.

Baha'i International Community

[4 December 1990]
[English]

156. First, we propose that article 3, paragraph 2 be amended to add, after "traditions and customs," the phrase, "to receive adequate education and training without discrimination". Thus, the revised paragraph would read:

> "2. All States (which have not yet done so) shall (take measures to create favourable conditions to enable (persons belonging to) minorities to freely)/(ensure that (persons belonging to) minorities are freely able to) express their characteristics, to develop their (education), culture, language, religion, traditions and customs, to receive adequate education and training without discrimination, and to participate on an equitable basis in the cultural, religious, social, economic and political life in the country where they live."

157. We propose this addition because minorities will only be able to assume their rightful place in society if they have access to high-quality education, without discrimination. Too often, educational facilities in regions inhabited by minorities have been substandard, and many members of minorities have not even received the most elementary schooling. Members of minorities should be given the opportunity to study their own language and culture, and to acquire the practical and social skills necessary for them to succeed both in their local communities and within the majority society. We hope the campaign to provide Education for All by the year 2000 will provide added impetus to the establishment and improvement of schools in regions inhabited by minorities.

158. In particular, we believe the education provided to all peoples should aim to develop each individual's intellectual and social capacities and should include practical experience in consultation - the process of reaching solutions with other people through honest and frank discussion, motivated above all by a search for common ground. Only through the process of consultation can enduring solutions be found to the tensions among minorities and majorities.

International Federation Terre des Hommes

[10 January 1991]
[Spanish]

159. In article 3, paragraph 2, the best wording would be the shortest: "All States shall enable minorities ...".

160. It is essential that the phrase "and with other minorities" in paragraph 3 should remain.

Four Directions Council

[2 December 1990]
[English]

161. Article 3(2). We believe that the alternatives contained in square brackets can best be reconciled as follows: "All States shall ensure that persons belonging to minorities are freely able to ...". This implies the obligation to take measures to create favourable conditions, where such measures are necessary or these conditions do not already exist. We also support removal of the square brackets around the word "education", because the right of minorities to transmit their identity to future generations is an essential element of cultural survival and development. As such, it is one of the most important activities minorities should be able to engage in freely.

162. Article 3(3). We do not oppose the deletion of the words in square brackets ("and with other minorities"), because we feel it may detract from the principal aim of this paragraph as a whole, which is to ensure the greatest possible free flow of ideas and information among all of the persons belonging to a particular national, ethnic, religious or linguistic group, regardless of their residence. For the sake of consistency with article 12 of the International Covenant on Civil and Political Rights, we also recommend revising the latter part of this paragraph as follows:

> "... especially by the exercise of the right to choose their residence within the territory of a State, and the right to leave any country, including their own, and return to it".

Minority Rights Group

[16 January 1991]
[English]

163. Paragraph 1: the right as expressed does not make sense. Article 27 of the Covenant on Civil and Political Rights describes the rights therein as rights of individuals exercised "in community with the other members of their group" (individual rights collectively exercised). The draft's reference to "individually or in community with the other members of their group" suggests that in some cases, culture, language and religion are private rather than communal. A State could claim compliance with the existing text of article 3 by allowing individuals their cultural rights whilst forbidding their communal expression. This would strike down the whole concept of minority rights.

MRG's recommendations on article 3, paragraph 1

164. MRG recommends the deletion of the words "individually or in community with other members of their group".

165. Paragraph 2: overlaps considerably with article 6. What is needed is a coherent, concise account of the positive obligations of States towards some ideal of equality in fact between majority and minority. Article 1 has already set the tone of the Declaration by promising the right to "promotion" of minority identity; this should be followed through.

166. The right to participate in national political and social institutions is worth specifying as a separate right, and is also set out in draft article 7. Group exclusion from participation in national life is a specific grievance of some minorities. A genuine right to participate also deflects group claims under the Declaration on Principles of International Law, which, on some interpretations, suggests that excluded groups have a right to secede from the State. Article 3 refers to "equitable participation"; article 7 (a) prefers "effective participation". Duplication should be avoided, and "effective" appears stronger than "equitable" in this particular context - the latter term would be the more appropriate one when considering distribution of resources, and it was in that context that it was used in the League of Nations treaties. Article 35 of the CSCE Copenhagen Document (supra) may be a slightly better text: it refers to "the right to effective participation in public affairs, including participation in the affairs relating to the protection and promotion of the identity of ... minorities".

MRG's recommendations on article 3, paragraph 2

167. MRG recommends the deletion of the words "which have not yet done so".

168. Paragraph 3: the ideal of cross-border contacts between members of minority groups in a world of States frequently divided by artificial frontiers is laudable. However, in view of the importance attached by States to their territorial integrity, some care is needed in the expression of any rights of contact. The words in square brackets should be deleted, since the essence of the right is linkage with other members of the group in question, not with any and every minority group. The right to leave and return is undoubtedly a necessary support in this context. The right to "cross-border contacts" appears to the present author to be admissible without qualification. The same cannot be said of the residence right, set out in the paragraph. The rights are separable, and the right to residence appears unrealizable. Article 32.4 of the CSCE Copenhagen Document provides a model for the contacts right: "Persons belonging to ... minorities have the right ... to establish and maintain unimpeded contacts among themselves within their country as well as contacts across frontiers with citizens of other States with whom they share a common ethnic or national origin, cultural heritage or religious beliefs". In the draft declaration, the use of the term "persons belonging to" appears correct.

MRG's recommendations on article 3, paragraph 3

169. MRG recommends the deletion of the words "This right shall be exercised in accordance with national legislation and relevant international human rights instruments", as the purpose of this clause is already covered by article 5.

COMMENTS ON ARTICLE 4

Germany

[7 January 1991]
[English]

170. The obligation of States to promote the human rights and fundamental freedoms of persons belonging to minorities, as contained in paragraphs 1 and 2, is welcomed, as is the notion of international co-operation for the benefit of minorities, as expressed in paragraph 3. However, being completely different, the idea contained in paragraph 3 should be distinguished from the State obligations of a domestic nature in paragraphs 1 and 2 and be included in a separate article.

Norway

[14 December 1990]
[English]

171. The last sentence of article 4, paragraph 2, in brackets, should be deleted.

United States of America

[27 December 1990]
[English]

172. Article 4, paragraph 2 essentially restates a fundamental freedom set forth in the Universal Declaration, namely the freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers. For reasons discussed above, the Government of the United States believes that this provision does not add anything to this declaration and, indeed, may only undermine existing standards. In our view, the paragraph should be deleted.

Baha'i International Community

[4 December 1990]
[English]

173. Second, the Baha'i International Community proposes that article 4, paragraph 1, be amended to add the following new sentence at the end: "In particular, States shall permit the exchange of, and take steps to disseminate information about minorities and their unique languages, cultures and religions, with a view to promoting understanding, tolerance and friendship among all people, including persons belonging to minorities".

174. Accordingly, article 4, paragraph 1 as amended would read:

> "All States shall take legislative or other appropriate and effective measures, especially in the fields of teaching, education, culture and information, to promote and protect the human rights and fundamental freedoms of (persons belonging to) minorities. In particular, States shall permit the exchange of, and take steps to

disseminate, information about minorities and their unique language, culture and religions, with a view to promoting understanding, tolerance and friendship among all people, including persons belonging to minorities."

175. We believe that ignorance of minorities and their way of life is one of the principal causes of the intimidation and discrimination that minorities suffer. Thus, education that seeks to instill in every individual a greater knowledge of, and appreciation for, the rich contributions that minority cultures have made to society is a critical requirement for the full realization of the human rights of minorities.

Article 4, paragraph 2

176. Third, we suggest that a new sentence be added at the end of the first sentence in article 4, paragraph 2, to read as follows: "Such measures shall furthermore include facilitation of the freedom of all people to interact with persons belonging to minorities and persons belonging to majorities for the purpose of fostering better mutual understanding".

177. Paragraph 2 would then read:

"Such measures shall include facilitation of the enjoyment by (persons belonging to) minorities of their freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, in particular through utilization of all forms of communication. Such measures shall furthermore include facilitation of the freedom of all people to interact with persons belonging to minorities and persons belonging to majorities for the purpose of fostering better mutual understanding. (This freedom shall be exercised in accordance with national legislation and relevant international human rights instruments)."

178. It is essential that all people be able to interact, mingle, and learn about one another's unique culture, in order to achieve greater harmony and understanding among minorities and the dominant culture. Separation will only breed greater ignorance. Accordingly, we believe that the declaration should protect the freedom to interact with all people without unreasonable interference.

Four Directions Council

[2 December 1990]
[English]

179. Article 4(2). The word, "communication" is ambiguous here and inconsistent with the terminology of article 19 of the International Covenant on Civil and Political Rights "any media of his choice". It is meaningless, moreover, to include the words, "in particular", since all transmission of information must obviously be by means of some form of commnication medium. We suggest the revision of this paragraph as follows:

2. Such measures shall include facilitation of the enjoyment by persons belonging to minorities of their freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, by any medium of their choice.

180. Article 4(3). While we have no strong preference for either of the alternatives in square brackets, we belive that the first alternative is both sufficient and has the advantage of brevity.

Minority Rights Group

[16 January 1991]
[English]

181. The general thrust of this article is welcome in specifying the duties of States towards minorities. There is, however, a considerable overlap with article 6 and article 3(2). As suggested above (discussion of 3(2)), a general formula is needed to indicate the general direction of State obligations, towards a régime which promotes the survival and flourishing of minorities within the State, mitigating their recurring difficulties in cultural and related terms. The need is for the equivalent of the "special measures" clauses of, e.g., the Racial Discrimination Convention, but without the limitations therein. In particular, there should be no suggestion of a "time-limited" support by the State. As long as minority status persists, so will the special measures be required. In terms of a declaration, perhaps it is feasible to do no more than leave the obligation expressed in general terms, and of the formulae in the draft declaration, article 6 appears to be better drafted (subject to comment below). If, on the other hand, the need for further specification of content is accepted by the Working Group, that content might usefully relate to "institutional" issues such as official languages of the State; use of minority languages in public affairs, mother-tongue and religious education; support for minority culture in national budgets; freedom to establish educational, cultural and religious organizations in general; freedom to participate in international non-governmental organizations. The institutional, public aspect of the various rights of minorities is crucial, since it is primarily through organizations that groups ensure their survival and development; purely "private" rights are limited in this context. The present author is of the opinion that further specification of State obligations is desirable; whether this is politically acceptable is another matter.

MRG's recommendations on article 4, paragraph 2

182. MRG recommends the deletion of the words "This freedom shall be exercised in accordance with national legislation and other relevant international human rights instruments" as the purpose of this clause is already covered by article 5.

COMMENTS ON ARTICLE 5

Germany

[7 January 1991]
[English]

183. Paragraph 3 should be worded more precisely, perhaps as follows:

> "Nothing in the present declaration may be interpreted as implying any right to engage in any activity or perform any action in contravention of the purposes and principles of the Charter of the United Nations, including the principle of territorial integrity."

United States of America

[27 December 1990]
[English]

184. Article 5, paragraph 3 provides that "nothing in this declaration may be construed as permitting any activity contrary to the purposes and principles of the United Nations and, in particular, contrary to the sovereignty, territorial integrity and political independence of States." The Government of the United States is of the view that the latter half of this provision is inappropriate in a human rights instrument of this nature. Human rights is properly a subject of international concern. International organizations, Governments and non-governmental organizations must be allowed to speak out against violations of human rights wherever they occur. This declaration should not provide a basis for States to characterize such activity as contrary to their sovereignty, territorial integrity or political independence.

Baha'i International Community

[4 December 1990]
[English]

185. Finally, we suggest that article 5, paragraph 3, be amended to read as follows:

> "Nothing in the present Declaration may be construed as permitting any activity contrary to the purpose and principles of the United Nations. <u>The Declaration shall be construed with due regard for the sovereignty, territorial integrity and political independence of States</u>".

186. We recommend this change in wording because it makes it more clear that such loose and manipulable concepts as "sovereignty" and "territorial integrity" cannot be used to override the rights set forth in the declaration; otherwise, the declaration would be pointless. Rather, the legitimate place of these concepts would be better recognized if the declaration were to be construed "with due regard" for them.

Four Directions Council

[2 December 1990]
[English]

187. Article 5. As noted above, we are recommending the addition of two sub-paragraphs on the questions of the collective exercise of rights and the application of national legislation. We also believe that sub-paragraph 2 could be phrased more clearly. The declaration itself cannot prejudice anyone's rights. The danger lies in the possibility that a State will interpret and apply the declaration in a way that conflicts with other instruments in the field of human rights. We recommend revising the text to read:

> 2. This declaration shall not be implemented in such a way as to prejudice the enjoyment of universally recognized human rights and fundamental freedoms by any person.

International League for the Rights and Liberation of Peoples

[13 December 1990]
[French]

188. Article 5, paragraph 4, is highly inadequate on the subject of the duties of minorities.

Minority Rights Group

[16 January 1991]
[English]

189. The article as a whole seeks to set the Declaration in (a) the context of the international obligations of the State, and (b) the general international law relating to human rights.

190. Paragraph 1: is satisfactorily drafted. It is noted that, while it is not specified, international customary law must be implied in "international obligations". International law as a whole is the correct frame of reference when the general obligations of States are considered.

191. The paragraph also means that when States interpret the scope of their international obligations, the terms of the declaration must be given due weight in the case of inconsistencies or unclarities. In particular, the thrust of the declaration in favour of support for minority identity should be accounted for in the interpretation of instruments which are broadly

"inegrationist" in objective (such as the International Convention on the Elimination of All Forms of Racial Discrimination): the preservation of a group identity should not be regarded as antithetical to integration, but complementary to it.

192. Paragraph 2, 3, 4: these paragraphs are necessary in view of the apprehensions of (a) those who regard minority rights as somehow interfering with universal human rights, and (b) States which see in the concept of minority rights a threat to their sovereignty and territorial integrity. The fears and apprehensions must be set to rest. The article as a whole is well drafted and reasonable. The use of "persons belonging to minorities" is correct in this context.

COMMENTS ON ARTICLE 6

Germany

[7 January 1991]
[English]

193. This provision is likely to modify the State obligations embodied in article 3 (2) and article 4 (1) and (2) and should therefore be deleted.

Norway

[14 December 1990]
[English]

194. The brackets containing article 6 of the draft text should be deleted.

Four Directions Council

[December 1990]
[English]

195. Article 6. We support the inclusion of this article in the final text of the declaration.

Minority Rights Group

[16 January 1991]
[English]

196. The article as a whole is worth supporting in its indication of State obligations towards minorities. One caveat relates to the phrase "depending on their specific conditions" as a starting-point for State action. Unless it is very unrealistic, international law must admit differences between States in wealth, resources, and ethnic and religious complexity, and account for it in its demands. Some States are clearly better equipped than others to act positively for minorities. Some relativity of standards is, therefore, inevitable. However, what international law demands is good faith in the assessment and fulfilment of obligations. Whatever formula is adopted to function for less advantaged States, it must not be allowed to function as pretext for inaction. The onus in this respect will fall upon whatever measures of implementation accompany the declaration.

COMMENTS ON ARTICLE 7

Germany

[7 January 1991]
[English]

197. The idea expressed in paragraph (a) is welcomed. However, it might be improved as follows in its second part, without any territorial reference:

> "... including participation in the affairs relating to the protection and promotion of the identity of such minorities."

United States of America

[27 December 1990]
[English]

198. If article 7 paragraph (a) is to be retained, the Government of the United States would prefer to see the final bracketed phrase be amended to provide "through national institutions and, where possible and appropriate, reginal institutions."

International Federation of Human Rights

[14 December 1990]
[French]

199. In article 7, paragraph (a), the square brackets around "through national institutions and, where possible, regional institutions" should be removed.

200. It must be remembered that the minority issue is not merely a question of the traditional "vertical" legal relationship between the State and the individual but also of the "horizontal" relationships of group to group, majority to minority or minority to minority. Some (generally religious or social) observances demanded by particular groups may also be contrary to public order as defined by the universally recognized instruments on basic rights.

201. Here the duties that are the corollary of acknowledged rights assume some prominence. The reconciliation of contradictory rights inherent in the practice of law takes on an additional dimension, requiring, in addition to a formal catalogue, regulatory institutions and bodies to make such rights compatible in practice. Such bodies should initially be established at the national level, in order to permit minorities to be represented, to take part, and to be associated with decisions not only affecting the regions in which they live but also enabling them to participate equitably in the affairs of State.

202. These proposals chime with the ideas presented by Mrs. Palley in document E/CN.4/Sub.2/1989/43, entitled "Possible ways and means to facilitate the peaceful and constructive resolution of situations involving racial, national, religious and linguistic minorities".

203. Mrs. Palley repeatedly points out the need for effective national institutions and emphasizes, in her "guiding principles", the importance of full popular participation. Paragraph 19, for example, states:

> The participation and co-operation of both minorities and majorities in designing institutions for the protection of their respective rights is likely to be an important factor in determining long-term success.

Four Directions Council

[2 December 1990]
[English]

204. Article 7 (a). As currently worded, this paragraph overlaps with article 3 (2). The important element, which should be stated more explicitly, is the right to take part in decisions affecting them particularly, on account of who they are or where they live. We would rephrase the paragraph as follows:

> (a) Persons belonging to minorities have the right to participate effectively in decisions particularly affecting them as minorities, or concerning the regions in which they live, and to exercise this right through national institutions and, where possible, through representative regional institutions.

205. This constitutes one of the most novel and important elements of the declaration, and is consistent with the growing recognition, in international fora, of the collective aspects of the right to participation in public affairs and economic decision making. See General Assembly resolution 44/211 (para. 6), UNDP Governing Council decision 90/18, the report of the Global Consultation on the Right to development as a Human Right (E/CN.4/1990/9/Rev.1), and the African Charter for Popular Participation in Development (E/ECA/CM.16/11, February 1990).

206. Article 7 (b). For clarity only, this paragraph should be reworded to end as follows: "with due regard for the legitimate interests of the minorities which may be affected".

International League for the Rights and Liberation of Peoples

[13 December 1990]
[French]

207. The stipulation that national policies and programmes, like programmes of international co-operation and assistance, should be planned and implemented with due regard for the legitimate interests of minorities (art. 7, para. (b)) is a worthwhile addition. It is also important to make it plain that United Nations bodies and specialized agencies must pay special attention to requests for co-operation and technical assistance in pursuit of the stated objectives of the draft declaration.

208. It would also be beneficial, however, for minorities to participate, through their representative institutions and non-governmental organizations, in the formulation of such programmes and the pursuit of such activities.

Minority Rights Group

[16 January 1991]
[English]

209. (a) If persons belonging to minorities have the rights to "respect for, and the promotion of" their identity (art. 1) they also have the right to "preserve" it. This part of article 7 thus appears redundant. However, the participation right is not redundant, and is discussed above in relation to article 3. Furthermore, the specific regional context of participation in article 7 is potentially very important for some groups: some, but not all minorities, form majorities in definable regions. The right to participate, in this context, is less than the explicit right to an autonomous administration, but incorporates some of its spirit. The "regional participation right" may lead in some cases to autonomy, in the light of the specific historical and territorial circumstances of the populations concerned. Much will depend upon local traditions, including the legal/constitutional tradition of the State. It is a matter of judgement whether autonomous administration (which may deflect claims to self-determination by groups dominant in part of a State's territory) is worth the allocation of a further, specific right or can be left as a matter of reasonable implication from the text reference to "regional institutions".

210. (b) This is unclear: whose "legitimate interests"? Subject to a revised sentence structure, the sense of (b) is positive. Presumably, the legitimate interests of the minority are primarily those set out in the Declaration. In this case, the phrase "legitimate interests" might be supplemented to read "their rights and legitimate interests".

MRG's recommendations on art. 7 (a)

211. MRG recommends the deletion of the words "[national], ethnic, religious or linguistic", and to insert the words "including participating in affairs relating to the protection and promotion of the identity of such minorities" after the words "in the affairs of the State".

COMMENTS ON ARTICLE 8

Minority Rights Group

[16 January 1991]
[English]

212. The text is succinct. It could, however, be appropriate to supplement it with a reference to the necessity/desirability of States co-operating with the United Nations in its efforts to support the principles of the declaration.

COMMENTS ON THE NEW ARTICLE

Minority Rights Group

[16 January 1991]
[English]

213. The "new article", which seeks to define the spirit of tolerance and friendship in which the declaration is to be carried out, unfortunately introduces new ambiguities into the text. The phrase "persons belonging to minorities" does not indicate what kind of minorities are included. Presumably, only the national, ethnic, religious or linguistic groups within the declaration are referred to. It would be better to repeat the basic description of the groups to make this clear. The article then tentatively includes the terms "all peoples" and "peoples" to denote the groups among which friendship, etc. is indicated. It is clear from general international law, the Charter of the United Nations, and, inter alia, the texts of the two United Nations Covenants on Human Rights, that "peoples" have the right of self-determination. However, the law distinguishes between a "people" and a "minority": minorities are not generally accorded any right to self-determination. In the context of a declaration on minority rights it is probably better to avoid "people", even though its proposed use in the new article does not ascribe any right. To insist on it could prejudice the support of States concerned about minority claims to self-determination and secession. The 1989 International Labour Organisation Convention (No. 169) on Indigenous and Tribal Peoples employs the term, but the text includes the disclaimer in article 1 (3) that: "The use of the term "peoples" in this Convention shall not be construed as having any implications as regards the rights which may attach to the term under international law".

MRG's recommendations on the new article

214. MRG recommends the substitution of the word "minority" for the words "[national], racial, ethnic, religious and linguistic".